

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

TRANSCRIPT OF PROCEEDINGS

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IN RE: C.R. BARD, INC., PELVIC REPAIR MDL NO.  
SYSTEM PRODUCTS LIABILITY LITIGATION 2:10-MD-2187

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IN RE: AMERICAN MEDICAL SYSTEMS, INC., MDL NO.  
PELVIC REPAIR SYSTEM PRODUCTS 2:12-MD-2325  
LIABILITY LITIGATION

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IN RE: BOSTON SCIENTIFIC CORPORATION MDL NO.  
PELVIC REPAIR SYSTEM PRODUCTS 2:12-MD-2326  
LIABILITY LITIGATION

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IN RE: ETHICON INC., PELVIC REPAIR SYSTEM MDL NO.  
PRODUCTS LIABILITY LITIGATION 2:12-MD-2327

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IN RE: COLOPLAST CORP. PELVIC SUPPORT MDL NO.  
SYSTEMS PRODUCTS LIABILITY LITIGATION 2:12-MD-2387

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STATUS CONFERENCE

December 6, 2012

BEFORE THE HONORABLE **JOSEPH R. GOODWIN**, Chief Judge  
AND  
THE HONORABLE **MARY E. STANLEY**, Magistrate Judge

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P R O C E E D I N G S

CHIEF JUDGE GOODWIN: Good afternoon. Everybody check your cell phones. Turn them off.

THE CLERK: The matter before the Court is *In Re: C.R. Bard, Inc., MDL Number 2187; In Re: American Medical Systems, Inc., MDL Number 2325; In Re: Boston Scientific Corporation, MDL Number 2326; In Re: Ethicon Inc., MDL Number 2327; In Re: Coloplast Corporation, MDL Number 2387, Pelvic Repair System Products Liability Litigation.*

CHIEF JUDGE GOODWIN: Well, the first item on the proposed agenda deals with proposals for additional trials for AMS cases, J&J/Ethicon, and BSC, Boston Scientific.

On November 26th, 2012, the parties submitted position papers in response to a PTO that I had entered that asked that they identify their positions on when bellwether trials should begin in 2013 in MDLs 22 -- 2325, 2326, and 2327.

It also asks for the size of the initial trial pool; justification for that trial pool size; the make-up of the trial pool, the percentage, for example, of SUI, POP, or combination cases; fourth, whether they would like to make oral presentations about those selections; and, finally, whether the MDL trial pool cases -- which, which trial pool cases should go first, second, third, fourth.

The defendants asked for time to submit a joint proposal.

1 I've, I've considered what I've got before me now and  
2 let me tell you what I think. I appreciate the considerable  
3 work that all the parties are doing. I realize that I have  
4 multiple MDLs going and they're all my children. I do not  
5 favor any of them. They all will be treated equally and  
6 fairly and move along together.

7 To that end, some of what I'm doing is to accomplish  
8 that, to see that no one MDL is favored over the other.  
9 Bard's got a big head start on the other MDLs, but that's  
10 not to say that we can't make adjustments to Bard to allow  
11 some other things to catch up.

12 Now, all of these things can run on parallel tracks  
13 even -- except for the trials because I've only got one of  
14 me. So, the -- there's lots of lawyers, and I realize that  
15 there are lawyers that have cross-cutting responsibilities.  
16 And I respect and need those lawyers to perform their roles  
17 in those cross-, on those cross-cutting issues. So, I'll be  
18 sensitive to that.

19 But I digress. First, let me tell you that I want to  
20 know if any of the parties want to make additional comments  
21 right now about the trials. Anything?

22 Mr. Garrard.

23 MR. GARRARD: Your Honor, I think that in the  
24 presentation we have made in writing, it sets out where we  
25 are. We'd be happy to respond to questions or concerns of



1 the Court.

2 CHIEF JUDGE GOODWIN: All right.

3 MR. ADAMS: On behalf of the defendants, Your  
4 Honor, I would say that I think Ms. Binis's letter set out  
5 our positions accurately.

6 The one thing that I would want to emphasize is that  
7 all of the defendants are in agreement that whatever case is  
8 tried first should be an SUI case and, again, for the  
9 reasons stated in the letter.

10 We think it's really important, based upon the Court's  
11 inventory, that an SUI case be tried first because it's  
12 really reflective of the volume of cases that are before the  
13 Court.

14 CHIEF JUDGE GOODWIN: I think that's going to  
15 happen because the Bard cases I'm going to try in the first  
16 wave are all POP cases, are they not?

17 MR. GARRARD: They, they are, Your Honor.

18 CHIEF JUDGE GOODWIN: Yeah.

19 Anything else?

20 Well, let me just run through what I've tentatively  
21 decided to do. And by "tentatively" it means I've decided  
22 it, but if there's some really good reason, I'm not rigid.  
23 Well, I wouldn't go that far.

24 I, I first adopt the concept that the plaintiffs put  
25 forward regarding the approach to trial pool size with some

1 substantial modifications of my own. I'm going to set it up  
2 as that three-step process. And, and the reason I like it  
3 is I'm not sure in Bard that there was sufficient  
4 development and sufficient information to allow the  
5 defendants to have what they needed.

6 So, I like this from my view of the circumstance, from  
7 the defendants' perspective, and apparently the plaintiffs  
8 like it because they proposed it. But there will be a  
9 three-step process wherein the parties are responsible for  
10 determining the selections for the initial pool in each MDL.

11 Now, the parties, I hope, will submit an agreed order  
12 describing this process in greater detail based on your very  
13 careful notes that you'll now be taking. I'll set it out  
14 briefly.

15 In each MDL, the initial pool will be comprised of 80  
16 cases, rather than 100 as the plaintiff suggests, with the  
17 plaintiffs choosing 40 cases, the defendants choosing 40.

18 This group of 80 will complete the plaintiffs' profile  
19 form only. And the final date for filing of eligible cases  
20 for this process will be cases filed on or before January 1,  
21 2013.

22 The discovery pool will be made up of 30 cases rather  
23 than 40 cases with the plaintiffs choosing 15 and the  
24 defendants choosing 15. So, you're going to cut it from 80  
25 to 30.

1        These cases will then proceed through limited discovery  
2 including what I think you want in fact depositions,  
3 treating physician depositions, implanting and, where  
4 applicable, explanting physician depositions, and  
5 depositions of sales reps. There may be something else, but  
6 I'm not sure. That sounds pretty close to what I think you  
7 need. I'll listen to you. If you can't agree, Judge  
8 Stanley and I will listen to you.

9        The trial pool will then be 16. Plaintiffs choose  
10 eight. Defendants choose eight. All of these cases will be  
11 worked up for trial.

12        I will choose five bellwether cases from that, from  
13 those 16 in each MDL. I will hear oral presentations in  
14 each MDL about those proposed trial pool selections because  
15 I realize by that point, a balanced approach to selection  
16 will be very important. So, I will hear from the parties on  
17 that.

18        Now, I hope that I'm not making this too complicated.  
19 And you're allowed to groan at this next part.

20        Bellwether trials will begin in the next -- in the, in  
21 the three newer MDLs beginning on December 3rd, 2013. The  
22 plaintiffs sought a date in September. The defendants  
23 wanted February. December 3rd.

24        I have -- and I advised Ms. Binis and Mr. Garrard this  
25 morning, or Ms. Moeller this morning that I have decided to

1 move the second group of the Bard trials for now, and  
2 they're going to go into rotation. So that the first trial  
3 will be from an MDL -- and we'll talk a little more about  
4 which one will go first -- on December 3rd. Then the second  
5 trial will immediately follow that. It will be from the  
6 second MDL, and then the third MDL trial, and then a Bard  
7 second tier trial, and then back to the beginning and one,  
8 two, three, four again until we all get sick of it and go  
9 home.

10 I've decided to try an AMS case first, assuming that an  
11 AMS case is submitted that's representative and appropriate.  
12 And as to that December 3rd case, I think we've got to have  
13 at least two cases ready to go on that date. I don't want  
14 one to go away and then we won't have another one ready.

15 I'll try them in sequence, as I've suggested. But by  
16 then, I have -- hope to have a better idea of how long I'm  
17 going to allow these trials to take. It's up to the  
18 parties -- and you-all have been doing a terrific job. It's  
19 up to you to continue with what you're doing.

20 You will make up the initial pool, the discovery pool,  
21 the trial pool. And I hope you'll choose representative  
22 cases that allow me and, most importantly, you and your  
23 clients to draw conclusions as a result of these bellwether  
24 trials.

25 I will not, even though the plaintiffs very much want

1 me to, choose multi-manufacturer, multi-product cases for  
2 bellwether trials. I -- for a number of reasons, which I'm  
3 not going to elaborate on, I find those to be problematic.  
4 Bellwether cases are intended to allow the sophisticated  
5 lawyers in this room to draw conclusions that lead to  
6 settlement or to further decision-making.

7 I recognize, and if I didn't recognize, Mr. Garrard  
8 told me in a meeting we had with defense on some other  
9 matter this morning, that I'm going to hear about other  
10 products in any single product case I do anyway. But be  
11 that as it may, for right now we're not going to try two  
12 products at once.

13 MR. GARRARD: Your Honor, may I ask a quick  
14 question?

15 CHIEF JUDGE GOODWIN: Yes, sir.

16 MR. GARRARD: I understand the Court saying they  
17 won't -- you won't try multi-manufacturer cases. But in  
18 terms of multi-product, many, many, many cases have more  
19 than one product of a single defendant. The Court's not  
20 saying, are you, that that would not be a candidate for  
21 bellwether if there is both -- well, for example, a prolapse  
22 product and an SUI product from the same defendant.

23 CHIEF JUDGE GOODWIN: I'm going to let the defense  
24 respond and then I'll answer you, although I think I know  
25 what I'm going to say.

1 Who wants to answer that?

2 MR. ADAMS: I will, Your Honor.

3 I think that they, they definitely have to be single  
4 product cases. Again, you know, it's part of the whole  
5 bellwether process that we're trying to pick cases that are  
6 going to be predictive of the outcome for future cases. If  
7 there are multiple cases, that doesn't do it. So, I think  
8 it has to be confined to a single product case.

9 CHIEF JUDGE GOODWIN: I've spent a lot of -- this  
10 is where I go off the reservation.

11 That's right, you get to close. Go ahead.

12 MR. GARRARD: Well, the only thing I'm going to  
13 say, Judge, is that when you look at the inventories of  
14 cases, the majority of the cases are not single product  
15 cases.

16 The, the SUI plus the POP are in lots and lots of  
17 cases. And there will be some SUI cases that don't have POP  
18 in them. But if we are restricted to POP only cases, a  
19 significant number of the prolapse cases would not be  
20 candidates. And I don't think that would be representative  
21 to the Court.

22 CHIEF JUDGE GOODWIN: Might as well.

23 MS. BINIS: Your Honor, in our inventory,  
24 60 percent of cases are SUI only cases. About 20 percent of  
25 the inventory is POP cases. And then the remaining -- it's

1 a little less than 20 percent, so my numbers might not be  
2 exactly right -- are combination cases. But the --

3 CHIEF JUDGE GOODWIN: Are they combination cases  
4 from the same manufacturer?

5 MS. BINIS: That's -- I'm talking about only AMS  
6 cases. I'm not talking about multi-manufacturer cases.

7 CHIEF JUDGE GOODWIN: So, 80 percent are not those  
8 kind.

9 MS. BINIS: That's correct. And, and the whole  
10 idea of trying an SUI case is because we believe that the  
11 SUI trial is a very different trial. And if you make a  
12 combination bellwether, that confuses the whole SUI issue.

13 So, for us, it would be very important that the SUI  
14 cases be single-product cases.

15 CHIEF JUDGE GOODWIN: I'm going to hold at this  
16 time that we're going to stick to single product, single  
17 manufacturer. But I recognize this is December, 2012, and  
18 the trial is December, 2013.

19 But in terms of your planning, your selection of cases,  
20 your development for trial, that's going to be the order of  
21 the Court. Something may happen. There may be agreements  
22 that occur. I don't know.

23 The whole purpose of having bellwether trials is to  
24 inform you and your clients so that you can better know what  
25 you're doing. It's not going to help me a whole lot. I've

1 thought of focus groups and mock trials and I've toyed with  
2 all those things. And I'm not ruling out any of, any  
3 innovative tricks absolutely.

4 But my general view is if you have skin in the game and  
5 it's real and you know what that relates to, that is, how  
6 much money is a red car/blue car case worth where I got  
7 rear-ended and I've got a myofascial ligamentous trial --  
8 you know, back when people used to actually try cases, you  
9 could say, well, that's a three-thousand-dollar case. And  
10 you knew it because they were trying them all the time in  
11 the courthouse.

12 Now we have bellwether trials not only because of the  
13 multiplicity of actions that we have to try in this kind of  
14 litigation, but because nobody else tries cases and we don't  
15 have anything to look at.

16 I will give you bellwether cases that have 12 products  
17 if necessary, although someone said this morning if you do  
18 that, there's malpractice clearly involved. But we'll,  
19 we'll get there. We'll get there.

20 I will try all these cases if I can breathe. And I  
21 will -- and I should tell you this now. I will follow these  
22 cases to the end of the earth as long as I'm on the bench.  
23 I will ask for the permission of the Chief Judge of this  
24 circuit and of the circuit where they're remanded to, if  
25 there are and there's no settlement, to follow the case.



1 And I will be there with you even unto always until these  
2 cases are over.

3 I may take a while, but I learned the lesson from  
4 private practice and from observation from asbestos, Mr.  
5 Garrard, that if you don't keep a handle on cases, they fall  
6 into a black hole. These cases are not going -- that's not  
7 going to happen. So, anyway, we're going to do that.

8 So, what I'm trying to lay out now is how we're going  
9 to pick the cases and how we're going to try them. That's  
10 the outline. I'm not saying we'll never try a two-product  
11 case as a bellwether case. I'm not saying we might not slip  
12 it in sometime. I don't know that yet. Right now, no.  
13 Right now, no.

14 Let me move -- what -- let me ask you what you want to  
15 do in terms of submitting a joint proposed scheduling order.  
16 Can you -- based on everything I've told you, how soon do  
17 you think you could accomplish that?

18 MR. GARRARD: Your Honor, we would -- from the  
19 plaintiffs' side, we would like to be able to do it within  
20 three weeks.

21 CHIEF JUDGE GOODWIN: Can you-all do that, Mr.  
22 Adams?

23 MR. ADAMS: How about 30 days, Your Honor?

24 CHIEF JUDGE GOODWIN: Well, just remember you're  
25 always just shoving it back, and then you're telling me you

1 don't have enough time because you wanted more time on the  
2 other end.

3 MR. GARRARD: I started to say two, Judge.

4 CHIEF JUDGE GOODWIN: Huh?

5 MR. GARRARD: I started to say two weeks.

6 MR. ADAMS: Three is fine.

7 CHIEF JUDGE GOODWIN: Three's fine. Thank you,  
8 Mr. Adams.

9 I will ask that in that scheduling order you allow for  
10 the completion of the *Daubert* motions first, followed by the  
11 dispositive motions, and you provide me a decent amount of  
12 time to deal with these motions.

13 I realize that with the short amount of time, all these  
14 deadlines are short. But my law clerks are really smart and  
15 I'm sure the next year's clerks, based on the interviews,  
16 will be smart. And Kate is very good at cracking the whip.  
17 But I'd still like a little time so that I can give you good  
18 rulings.

19 While I'm talking about that and slightly out of order,  
20 and I'll try to remember this, there are motions pending  
21 that I'm aware of, remand motions and so forth. I will get,  
22 I will get them done. I have not been in a hurry as to some  
23 of them deliberately. I'm sorry. I just haven't been. But  
24 I will do them.

25 Let's go to the plaintiff profile form issues. Those

1 were due on the 3rd I think. What's the status of those? I  
2 want to know from the defendants. Did you get them?

3 Ms. Jones.

4 MS. JONES: Your Honor, we have gotten a  
5 substantial number of them. My recollection is that we've  
6 gotten 1300 in the Ethicon. The vast majority of those we  
7 got on the 3rd. We have 185, roughly, requests for  
8 extensions that have been given.

9 And what we did with those, Your Honor, frankly, is  
10 that we have told the plaintiffs that while we would  
11 normally agree, that we were anticipating that Your Honor  
12 might do something kind of like you've done and we might be  
13 on a tight schedule, and that we would -- we were willing to  
14 give them 30 days provided we got a reciprocal amount to the  
15 extent that we needed to, but that we needed those fact  
16 sheets in.

17 The one issue that -- I speak only for Ethicon and Mr.  
18 Thomas will speak more in detail -- is that we have -- out  
19 of the ones that we, that we have and have looked at, one  
20 out of five of those fact sheets is deficient.

21 MR. THOMAS: Christy, that's backwards.  
22 Eighty percent of them are deficient. Only 20 percent are  
23 good.

24 CHIEF JUDGE GOODWIN: Well, that's a very big  
25 problem.

1 MS. JONES: And it's a problem. And, and the way  
2 we have dealt with it this morning thus far is that, that in  
3 our -- in the original order we had ten days to get  
4 deficiency letters out.

5 CHIEF JUDGE GOODWIN: Uh-huh.

6 MS. JONES: Clearly, it takes much more time to  
7 process a deficiency if you've got problems with it.

8 So, we had talked with Mr. Aylstock this morning and we  
9 had an agreement, with the Court's permission, that we would  
10 at least have until -- rather than the ten days to get the  
11 deficiency letters out, assuming that, that the, that the  
12 rate of deficiencies continues at the same pace, that we  
13 would have until January the 15th to get all of those out.

14 We, we are moving on an every-day basis processing them  
15 and sending them out immediately. But ten days, if they are  
16 at that, if they continue to be deficient at the same rate  
17 is --

18 CHIEF JUDGE GOODWIN: Let me hear from the other  
19 people about how, what their percentage of deficiencies are.

20 Ms. Binis.

21 MS. BINIS: Your Honor, as of the 3rd, we've got  
22 900 PPFs, but many of those, again, are deficient, or we're  
23 estimating half. We have 130 requests for extensions. And,  
24 like Ms. Jones, we said to plaintiffs, "We're happy to give  
25 you 30 days if we get a reciprocal 30 days." And we did not

1 get 800 PPFs.

2 CHIEF JUDGE GOODWIN: You're missing 800.

3 MS. BINIS: We're missing 800.

4 CHIEF JUDGE GOODWIN: As you remember, the order  
5 allows me to dismiss those cases. Okay.

6 MR. ADAMS: Boston Scientific's substantially the  
7 same. We're missing about 600.

8 CHIEF JUDGE GOODWIN: All right.

9 MR. ADAMS: And as far as deficiencies, we haven't  
10 had time to give you that number, but --

11 CHIEF JUDGE GOODWIN: As far as I'm concerned, the  
12 train can't move out of the station until we put fuel in  
13 the, in the coal box. Boy, am I old. That's number one  
14 priority for the plaintiffs and the plaintiffs' liaison  
15 counsel to fix.

16 MR. GARRARD: Your Honor, we are, we are working  
17 at that.

18 In terms of the deficiencies, though, the Court needs  
19 to know that -- and I'll use my office as an example. We  
20 haven't gotten a lot of deficiency letters from my office,  
21 but the majority of the deficiency letters we have gotten  
22 are because somebody's maiden name was not put on the form  
23 or somebody didn't initial a page of the PFS or you didn't  
24 put the Social Security number here while we've got it over  
25 here in one of the medical releases, but you didn't put it

1 on the form or you didn't put "NA" in a portion of the form  
2 where it would be NA. That's the type of deficiencies we  
3 are getting. And one of the things that --

4 CHIEF JUDGE GOODWIN: Well, I want to concentrate  
5 on substantial deficiencies. And I will take into account  
6 when motions to dismiss for late and deficient filings are  
7 filed whether or not the deficiency was a substantive  
8 matter.

9 MR. GARRARD: Well, that's kind of my point,  
10 Judge. But there are a couple issues that I would like to  
11 raise with the Court. And this is -- I take responsibility  
12 for this.

13 When we worked it out with the PPF form, it has a  
14 provision requiring that the signature of the plaintiff be  
15 notarized. It also has a provision that the plaintiff has  
16 to initial each page.

17 And in talking to lawyers throughout the country, it is  
18 a real problem getting folks to get signatures notarized.  
19 It becomes a real logistical problem.

20 It also becomes a problem when you go through these  
21 forms with your clients -- and most of that's done by  
22 telephone -- that you have to make changes. Well, if you've  
23 already sent a profile form to them and you make changes,  
24 then you've got to send it all back again to have it re-done  
25 and re-initialed, et cetera.

1           The Federal Rules -- and it's in there and I, and I  
2       didn't object to it. But the Federal Rules don't require in  
3       interrogatory answers that you notarize the plaintiff's  
4       signature.

5           CHIEF JUDGE GOODWIN: Let, let me make this  
6       simple.

7           MR. GARRARD: Yes, sir.

8           CHIEF JUDGE GOODWIN: I'm waiving the notary  
9       requirement. I will hold each and every lawyer responsible  
10      who sends one of these things in under Rule 11 for the good  
11      faith truthfulness and accuracy of the matters contained on  
12      the sheet.

13          MR. GARRARD: Could, could we have the same relief  
14      from the initialing, Your Honor?

15          CHIEF JUDGE GOODWIN: Sure, sure.

16          MR. GARRARD: And, and we are working at trying  
17      to --

18          CHIEF JUDGE GOODWIN: I think Rule 11 is under  
19      used. And I don't mean that in an *in terrorem* fashion. I  
20      just think it's under used. And I, I've got sense enough to  
21      know what's serious and what's not serious. But I don't  
22      want Micky Mouse as a plaintiff without some lawyer standing  
23      behind it to say, "On my oath as a lawyer and on my license  
24      which I treasure, this is a good faith offering."

25          MR. GARRARD: I understand that, Your Honor.

1 CHIEF JUDGE GOODWIN: And I like the reciprocal  
2 idea that you've got going informally. That's fine. But  
3 we've got to get it moving. We'll never meet these  
4 deadlines that you-all have proposed, which I've come down  
5 in the middle of, unless we get it moving.

6 MR. GARRARD: Yes, sir.

7 CHIEF JUDGE GOODWIN: Now, in addition, because  
8 lawyers are busy and some of them haven't learned to use  
9 computers and because they can't follow directions or they  
10 would have done something more useful than what all of us  
11 are doing, we've had lawyers that have trouble filling out  
12 profile sheets. And, so, they call the Clerk's Office. And  
13 then they complain to us that liaison counsel won't return  
14 their phone calls.

15 I am suggesting to liaison counsel -- where are  
16 you-all? I'm suggesting to liaison counsel that even if you  
17 have to hire a paralegal to do it that you return the phone  
18 calls of these people that you will have to be back in touch  
19 with at some time in the future on more important matters.  
20 And be sure to be able to answer their questions.

21 My Clerk's Office, I think you'll find, is very helpful  
22 and they will try really hard to cooperate. And they are  
23 not complaining bitterly. They're just telling me they're  
24 getting a lot of questions.

25 MR. GARRARD: We do too, Judge, --



1 CHIEF JUDGE GOODWIN: I'm sure.

2 MR. GARRARD: -- my office. And we do respond to  
3 them.

4 CHIEF JUDGE GOODWIN: I ask that, as you've done,  
5 that in these profile form issues that in terms of disputes  
6 about them that you do it informally by letter. If it comes  
7 to a motion to dismiss, then it does and I'll deal with it  
8 then. But I don't want to referee any disputes short of a  
9 motion to dismiss. And I assume I speak for Judge Stanley  
10 on that.

11 I have about six motions to remand pending. I'm  
12 working on two of them. The others I think were filed in  
13 maybe September. We'll get to them.

14 One of the, one of the things that 18 years on the  
15 district bench has taught me is that I've written an awful  
16 lot of remand orders, and I live in fear that I will write a  
17 remand order that directly contradicts a remand order I've  
18 issued in the past.

19 So, as a consequence, the longer I go, the longer it  
20 takes to decide remand motions. And it seems to me -- and,  
21 again, this is probably unfair, but I hope you'll take it in  
22 a good spirit. And I hope if you report it to any law  
23 professors, they take it in good spirits. It seems to me  
24 they're not teaching jurisdiction and procedure very well in  
25 law schools anymore. But maybe it's just me.

1 But I'll get, get to those because I'm sure that some  
2 of you have had calls about them from the lawyers who have  
3 them pending and I will deal with them.

4 Mr. Garrard has indicated on the deposition protocol  
5 that the parties are very close on that issue, but I'll let  
6 Judge Stanley deal with that topic.

7 MR. GARRARD: Your Honor, we have orders that we  
8 have agreed upon with Boston Scientific, with American  
9 Medical Systems, and with Ethicon. The Ethicon one is  
10 slightly different. That was explained to Your Honor  
11 earlier today. And we will have those submitted to the  
12 Court within the next couple of days.

13 MAGISTRATE JUDGE STANLEY: Okay. Thank you.

14 CHIEF JUDGE GOODWIN: Next, I had a stay in  
15 Pre-Trial Order Number 1. Some of the non-MDL defendants -  
16 Caldera comes to mind - have asked me if that stay is going  
17 to stay, stay's going to stay. There's a song like that.

18 Unless I hear objections from all of you, it seems to  
19 me to be most convenient at this time without setting a  
20 deadline to leave the stay in place that allows those folks  
21 not to answer or plead in defense.

22 Hearing no objection, so ordered.

23 MS. WAGSTAFF: Your Honor, --

24 CHIEF JUDGE GOODWIN: Somebody had something to  
25 say.

1 MS. WAGSTAFF: Yes.

2 CHIEF JUDGE GOODWIN: I'm sorry.

3 MS. WAGSTAFF: That's all right. This is jumping  
4 forward a little bit to the motion to amend in Boston  
5 Scientific. But I would request leave from that stay to  
6 conduct some jurisdictional discovery on Proxy Biomedical  
7 and it's agreement between the parties.

8 CHIEF JUDGE GOODWIN: I don't -- we'll get to  
9 that.

10 MS. WAGSTAFF: We'll get to that later?

11 CHIEF JUDGE GOODWIN: Yeah.

12 MS. WAGSTAFF: Okay.

13 CHIEF JUDGE GOODWIN: I've entered a severance  
14 order in Ethicon. And severance orders in AMS and Coloplast  
15 are, as I understand it, in the process. I have, I have not  
16 received a severance order in Bard or Boston Scientific. I  
17 mentioned that to Mr. Garrard this morning as to Bard. When  
18 can I expect that?

19 MR. GARRARD: I think we can have that --

20 CHIEF JUDGE GOODWIN: How about Boston Scientific?

21 MR. STRONGMAN: Jon Strongman. We have a  
22 severance order agreed to that I thought was, was done. So,  
23 we can, we can get it.

24 CHIEF JUDGE GOODWIN: Okay. Just be sure I get  
25 it, would you.

1 MR. STRONGMAN: Yes.

2 CHIEF JUDGE GOODWIN: Now, let's talk about the  
3 amending of the short form complaints to add -- wait a  
4 minute.

5 Judge Stanley, there's, there's still parties filing  
6 multi-party complaints primarily in transferred cases.

7 Watch for those. Leadership, if you'd watch for those  
8 so we can monitor those and submit severance orders.

9 MR. AYLSTOCK: Your Honor, on the severance order  
10 issue, it was brought to my attention after we worked with  
11 our counterparts at Ethicon and submitted ours to Ms. Fife  
12 that some of those actions that are coming to this court are  
13 class actions that might have some subclasses. And, so, I  
14 guess I just want to bring that to your attention.

15 CHIEF JUDGE GOODWIN: Do you want to call them up  
16 and give them an education on class actions?

17 MR. AYLSTOCK: Yes, Your Honor, we can do that.

18 CHIEF JUDGE GOODWIN: All right.

19 The plaintiffs wish to amend the short form complaints  
20 to add Coloplast and submit a master complaint and plaintiff  
21 profile form in Coloplast.

22 It may be easier for us to make changes in the existing  
23 short form complaints but require Coloplast to submit their  
24 short form complaint. What do you think?

25 MR. GARRARD: As to the, the existing MDLs, Your

1 Honor, Bard, Boston Scientific, AMS, and Ethicon, it seems  
2 to me the simplest thing is if we have the Court's  
3 permission to add Coloplast to the short form complaint.

4 As to the other, I thought that Coloplast and the  
5 plaintiffs had reached some agreements as to master  
6 complaints, short form complaints and I would let them speak  
7 to that.

8 MR. SALIM: Yes, Your Honor. We filed yesterday a  
9 joint master complaint and a short form complaint.

10 CHIEF JUDGE GOODWIN: We haven't got it yet. If  
11 you filed it yesterday, it hasn't hit the docket. But Mrs.  
12 Fife has been quite busy getting ready for this hearing.  
13 So --

14 MR. SALIM: Okay. We have a receipt that it was  
15 received, Your Honor. So, we'll follow up.

16 CHIEF JUDGE GOODWIN: Kate will be in touch with  
17 you. She thinks it will be easier if we do the short form  
18 complaint so that we -- so that it doesn't get messed up.  
19 She didn't use the word, she didn't use the word "messed  
20 up."

21 MR. GARRARD: I know what she's talking about  
22 because there have been some technical issues that we have  
23 had to deal with. And I understand what she's saying.

24 CHIEF JUDGE GOODWIN: All right.

25 We need to hear from Ms. Varney about the agreed master

1 complaint in Coloplast.

2 MS. VARNEY: I agree. Your Honor, we have reached  
3 an agreement on the master complaint. And we appreciate the  
4 Court's efforts in trying to short-circuit and make sure  
5 it's done correctly in amending the master complaints in the  
6 other MDLs.

7 CHIEF JUDGE GOODWIN: Thank you very much.

8 MS. VARNEY: Thank you.

9 CHIEF JUDGE GOODWIN: Okay. And you will now tell  
10 me about early case assessment?

11 MS. VARNEY: I certainly could, Your Honor. We're  
12 moving forward. We've been working well with the  
13 plaintiffs' counsel in terms of acquiring their medical  
14 records so that we can begin the process of assessing them.

15 CHIEF JUDGE GOODWIN: Have we covered all the  
16 issues on Agenda Item 2(a) as far as you're concerned?

17 MS. VARNEY: Yes, Your Honor.

18 CHIEF JUDGE GOODWIN: And 2(b)?

19 MS. VARNEY: Yes, Your Honor.

20 MAGISTRATE JUDGE STANLEY: How fast do you think  
21 you'll be moving along?

22 MS. VARNEY: With great consistency and  
23 forthrightness.

24 CHIEF JUDGE GOODWIN: Yeah. We gave you 60 days  
25 and we're past that. All right. Thank you.

1 MS. VARNEY: Thank you, Your Honor.

2 CHIEF JUDGE GOODWIN: Number 3 is in the AMS.

3 MR. GARRARD: I think we dealt with --

4 CHIEF JUDGE GOODWIN: I think we dealt with that  
5 this morning.

6 MR. GARRARD: Yes, sir.

7 CHIEF JUDGE GOODWIN: All right. And --

8 MAGISTRATE JUDGE STANLEY: We have --

9 CHIEF JUDGE GOODWIN: Have you dealt with this or  
10 do you want to deal with that after?

11 MAGISTRATE JUDGE STANLEY: I have received a  
12 letter from Ms. Binis, but you omitted the exhibits. There  
13 were no exhibits attached to it. And I need to know what  
14 the plaintiffs want to do about responding to this.

15 MS. BINIS: I apologize for the omission, Your  
16 Honor. I was out of town. I will send that to you. I have  
17 brought with me today my partner from Los Angeles who is in  
18 charge of all the discovery issues in our litigation. And  
19 if you have any questions, she'd be happy to respond or  
20 answer what our position is.

21 MAGISTRATE JUDGE STANLEY: Well, let me hear from  
22 Ms. Fitzpatrick.

23 MS. FITZPATRICK: Your Honor, we had an  
24 opportunity to meet with AMS this morning to try to work  
25 through some of these issues. We got the letter yesterday

1 afternoon, so we haven't been able to get the whole way  
2 through.

3 We've agreed that we are going to meet and confer in  
4 the middle to end of next week to see how many of these  
5 issues we can agree on and what we can do about the timing  
6 of the production.

7 So, I think that for right now there's no need for the  
8 Court to do anything while we work through this process.

9 MAGISTRATE JUDGE STANLEY: Excellent. I'll be  
10 available when you just can't -- get stuck.

11 MS. FITZPATRICK: Thank you, Your Honor.

12 CHIEF JUDGE GOODWIN: There's a motion to amend  
13 the master long form complaint in Boston Scientific.  
14 Whose -- who will report on that?

15 MS. WAGSTAFF: Your Honor, Amy Wagstaff. The  
16 parties have agreed to conduct some jurisdictional discovery  
17 with respect to Proxy Biomedical with the Court's  
18 permission. And, therefore, we don't seek Court assistance  
19 at this time.

20 CHIEF JUDGE GOODWIN: How about 45 days?

21 MS. WAGSTAFF: That sounds great.

22 MR. GARRARD: Your Honor, may I, may I address  
23 that?

24 CHIEF JUDGE GOODWIN: Huh?

25 MR. GARRARD: May I address that?



1 CHIEF JUDGE GOODWIN: Yes.

2 MR. GARRARD: Part of the issue there -- and  
3 counsel for Proxy and I have talked about it yesterday and  
4 today -- is that there is a jurisdictional motion that has  
5 been filed in one of my cases which was originally filed in  
6 Georgia and is in this court.

7 We have agreed to do some limited jurisdictional  
8 discovery. That plays into the issue of putting off ruling  
9 on the motion because that's going to have some impact  
10 potentially on that.

11 CHIEF JUDGE GOODWIN: Let me just go over a few  
12 things about this and see if I can be of some help.

13 I find it almost impossible to believe that there's no  
14 Federal Court in the United States that does not have  
15 personal jurisdiction over Proxy. I'm sure there is one.  
16 And I'm sure Proxy has at some time been sued in this  
17 country. Is that a fair assumption?

18 MS. WAGSTAFF: I would assume, but counsel for  
19 Proxy is here.

20 CHIEF JUDGE GOODWIN: If so, where? And was there  
21 a jurisdictional finding? I suspect --

22 MAGISTRATE JUDGE STANLEY: Maybe Proxy's counsel  
23 can tell us.

24 CHIEF JUDGE GOODWIN: Well, maybe I should talk to  
25 Proxy's counsel.

1 MR. COSGROVE: Your Honor, P.J. Cosgrove for --  
2 specially appearing for Proxy.

3 CHIEF JUDGE GOODWIN: You were thinking you were  
4 going to duck this, weren't you?

5 MR. COSGROVE: I tried as hard as I could. I am  
6 actually not aware of any other suits against Proxy  
7 Biomedical Limited, the Irish company.

8 CHIEF JUDGE GOODWIN: No, no, no, by anybody  
9 that's sued them in the United States of America ever.

10 MR. COSGROVE: As I sit here, I'm not aware of any  
11 other litigation.

12 CHIEF JUDGE GOODWIN: I'm sure somebody has. If  
13 personal jurisdiction, let's say, were found in  
14 Massachusetts or Minnesota, for example, then a plaintiff  
15 could file in their home district. Then it would go to the  
16 MDL panel. Then it would end up back here.

17 These things are meant to make it -- make the  
18 processing of these matters more efficient. I don't see any  
19 reason to get all hung up on it. Let's find out.

20 If there is such a state and if there is jurisdiction  
21 in the United States, why is it in your interest for me to  
22 dismiss -- and I understand your arguments on it. I'm just  
23 saying, why is it in your interest -- and you don't have to  
24 answer this, this could even be rhetorical -- to have me  
25 dismiss a directly filed case only to have it filed

1 somewhere else where there is personal jurisdiction and then  
2 have it returned here?

3 MR. COSGROVE: Your Honor, to begin with, we do  
4 not disagree with your, what I'll characterize as your  
5 assessment of this as a forum-by-forum analysis.

6 The problem is in the context of a mass tort, we're  
7 dealing with a precedent setting situation and the potential  
8 creation of a situation whereby the checking of a box, you  
9 know, we could be subjecting ourselves to, to nationwide  
10 jurisdiction. And --

11 CHIEF JUDGE GOODWIN: I don't, I don't see it that  
12 way. But you certainly have the right, your company does,  
13 if they want to, to go through that process and have the  
14 suits filed wherever they can be filed, and then they'll be  
15 transferred here. But I will not look kindly on it. Could  
16 you tell them that?

17 MR. COSGROVE: I will relay that message. And Mr.  
18 Garrard and his colleagues and I have conferred about it and  
19 that's where we ended up with in regards to this. The hope  
20 is and the intention is that this limited jurisdictional  
21 discovery can inform everyone's position.

22 CHIEF JUDGE GOODWIN: Okay. Do 45 days suit you  
23 then?

24 MR. COSGROVE: Sixty would be better, Your Honor.

25 CHIEF JUDGE GOODWIN: You know, because you've

1    been very polite in the face of what wasn't a very nice  
2    attack on your company and your general demeanor and all  
3    kinds of things, let's make it 50.

4               MR. COSGROVE: Thank you, Your Honor.

5               MR. GARRARD: Your Honor, may, may we have until  
6    two weeks thereafter to respond to that jurisdictional  
7    motion?

8               CHIEF JUDGE GOODWIN: I cannot even keep track of  
9    the deadlines which you have to meet, Mr. Garrard. But if  
10   you say so, yes.

11              MR. GARRARD: Thank you, Your Honor.

12              CHIEF JUDGE GOODWIN: I'll give you two more  
13   weeks. Again, again, you are the plaintiff. And every time  
14   you ask for time, you're slowing the train down as it moves  
15   down the track to a conclusion. And I know you're well  
16   aware of that.

17              MR. GARRARD: I'm very well aware of that.

18              CHIEF JUDGE GOODWIN: Having been on the defense  
19   side, you've no doubt thrown cross ties across in front of  
20   trains.

21              MR. GARRARD: I don't want cross ties, Your Honor,  
22   but I also don't want to lose the motion. I don't think we  
23   will --

24              CHIEF JUDGE GOODWIN: All right.

25              MR. GARRARD: -- but I want to be fair.

1 CHIEF JUDGE GOODWIN: You have something else and  
2 I'd like to hear it.

3 MS. WAGSTAFF: Yes, Your Honor.

4 May I request that the parties file simultaneous  
5 supplemental briefs on jurisdiction on our motion to amend  
6 two weeks after the completion --

7 CHIEF JUDGE GOODWIN: Yes.

8 MS. WAGSTAFF: Okay. Thank you.

9 CHIEF JUDGE GOODWIN: But an agreement would be  
10 even better.

11 MS. WAGSTAFF: Excellent. Thank you.

12 MR. GARRARD: I can assure you that Mr. Cosgrove  
13 and I will have some further discussions, Your Honor.

14 CHIEF JUDGE GOODWIN: Okay.

15 Judge Stanley, the 30(b)(6) deposition update is yours.

16 MAGISTRATE JUDGE STANLEY: It's my understanding  
17 that there had been a dispute during the 30(b)(6) deposition  
18 of Ethicon, and apparently it got resolved.

19 MS. JONES: There really was not a dispute. I  
20 think this is just a carry-over from last, the last agenda  
21 and so forth. We have 30(b)(6) depositions scheduled for  
22 plaintiffs and I don't think there's anything to be taken  
23 care of on that.

24 MR. AYLSTOCK: We, we were able to resolve the  
25 dispute during the deposition. We appreciate this Court's

1 willingness. And it will be in the, in the Court's protocol  
2 simply to be available. But everything got worked out. It  
3 had to do with some notes that this 30(b)(6) witness had.

4 Additional 30(b)(6)s are being scheduled and we're  
5 moving forward with all due haste on those, Your Honor.

6 MAGISTRATE JUDGE STANLEY: Great. And the  
7 subpoena thing apparently is not ready for resolution yet.

8 MR. AYLSTOCK: It's -- Your Honor, Bryan Aylstock.  
9 AdvaMed is the trade group for the medical device  
10 corporations and there is a subpoena issued and it's a  
11 jurisdictional issue. So, there are a couple of things that  
12 we need to clear up.

13 But I do expect very shortly that there will be a  
14 discovery dispute about the production of those documents,  
15 but it's not ready for resolution yet.

16 MS. JONES: And just so the Court is clear, that's  
17 not a discovery dispute with Ethicon or J&J. That's a third  
18 party subpoena which we're not involved with.

19 MR. AYLSTOCK: It was, it was served in the  
20 Ethicon litigation in the Ethicon MDL on this third party,  
21 although I think your medical affairs person spoke on behalf  
22 of it. So, they're all together, but we'll work that out.

23 MAGISTRATE JUDGE STANLEY: All right. I did  
24 understand that it was AdvaMed that was objecting to the  
25 subpoena.

1 MR. AYLSTOCK: Yes, Your Honor, absolutely.

2 CHIEF JUDGE GOODWIN: Let me speak to everybody  
3 about State Court cases.

4 The next item on the agenda has to do with New Jersey  
5 state update.

6 Judge Higbee attended the Federal Judges' MDL  
7 conference and explained to me over a beverage that she had  
8 not in the past had joint hearings on *Daubert* matters, but  
9 that she was open to the idea. I remember somebody saying  
10 that she was adamantly opposed to that. She is no longer  
11 adamantly opposed to that. Judge Kottmyer was there as  
12 well. Kottmyer? Is that right?

13 MS. WAGSTAFF: Kottmyer.

14 CHIEF JUDGE GOODWIN: I believe that's her name.  
15 Anyway, but there are -- and I mentioned this to Ms. Binis  
16 and Mr. Garrard this morning I believe. There are a number  
17 of cases set for trial in 2013 across the country. AMS has  
18 a lot. Somebody else has a good many.

19 To the extent that the lawyers involved in those cases  
20 also have federal cases in this MDL, I would ask you to be  
21 considerate of the MDL process. And the defendants who are  
22 defending those state cases, I would ask that you be  
23 considerate of the MDL process.

24 Sovereign states with good judges may do as they  
25 please, but they rarely are so lacking in business that they

1 want to proceed where there's a joint motion for delay. I  
2 would like to keep us all somewhat close together.

3 It will not be really helpful to have trials in eight  
4 or ten state jurisdictions before we even get to bellwether  
5 trials in this. And I would, would like to know, and I will  
6 find out, who has those state cases. And maybe we could get  
7 a report on those from those lawyers at the next status  
8 conference.

9 MR. CLARK: Your Honor, --

10 CHIEF JUDGE GOODWIN: Yes.

11 MR. CLARK: -- Clayton Clark.

12 CHIEF JUDGE GOODWIN: Yes, sir.

13 MR. CLARK: I probably have the majority or more  
14 of the State Court cases than anyone else here. So, I think  
15 a report to you briefly might be in order at this time.

16 Where we have found that lawyers have filed State Court  
17 cases, we've attempted to get with them and become involved  
18 in the cases in a number of different situations or filed  
19 them with them when they plan on going and filing the cases.

20 I thought what might be helpful is if we could gather a  
21 list of judges in those various state courses, state cases,  
22 get their phone numbers, their names, phone numbers, et  
23 cetera, where if you chose to get with them -- I mean, for  
24 instance, we just had a case that got set in October,  
25 October of 2013, next year, with Ethicon in South Texas.



1 That judge, Judge Delgado, wanted to set it in September.  
2 Ethicon argued for November. We argued for October. And  
3 the Judge went and moved it out to October.

4 So, I think that Judge Delgado and these other judges  
5 in St. Louis and elsewhere would probably be open to  
6 discussing any of your concerns and possibly moving cases  
7 around where it's appropriate.

8 CHIEF JUDGE GOODWIN: I'll be happy to do that.  
9 I've actually found state judges very receptive. And I'm  
10 anxious to be helpful to them. I have in past MDLs gotten  
11 on an airplane and gone to their state and sat with them on  
12 joint hearings. And I'm prepared to do that kind of thing  
13 and I'll -- I would love to have that information.

14 MR. CLARK: If we start out with a communication  
15 with them, I think we'd probably know a lot better than just  
16 a report from us.

17 CHIEF JUDGE GOODWIN: That would be great.

18 MR. CLARK: All right.

19 CHIEF JUDGE GOODWIN: Have we -- we talked about  
20 the Bard trials. Is there anything more on that?

21 MR. GARRARD: No, sir, I don't think so.

22 CHIEF JUDGE GOODWIN: The next status conference  
23 is January 10th at 1:00.

24 MR. GARRARD: Yes, sir.

25 CHIEF JUDGE GOODWIN: Anything further to come

1 before the Court?

2 MR. GARRARD: Your Honor, --

3 CHIEF JUDGE GOODWIN: Mr. Garrard.

4 MR. GARRARD: -- as the plaintiffs' lawyers, and  
5 desiring to move matters as rapidly as we can, we've got  
6 some ideas of potentially some innovative approaches. Would  
7 the Court be receptive to that perhaps being on the agenda  
8 at the next hearing and hearing from us as to some  
9 innovative ways that we might work together with the Court  
10 towards moving cases along that perhaps have some approaches  
11 in addition to or other than simply full-blown jury trials?

12 CHIEF JUDGE GOODWIN: Yes. We talked about that  
13 briefly in the meeting this morning with a couple of the  
14 defendants. Yeah, I'm always interested in it, but  
15 everything short of a trial in the case is only as helpful  
16 as the enthusiasm of both parties for the process.

17 That's why you can go back for 18 years that I've been  
18 on the bench and you will never find that I ordered  
19 mediation. If the parties want to mediate, they should  
20 mediate. If they want to settle, they should settle if they  
21 want to do things.

22 Now, having said that, I'm not going to -- I'm not  
23 inclined to order things that the parties object to that are  
24 out of the ordinary. Well, that's not true. You're  
25 following me. I'm meandering.

1 I encourage innovation. I encourage you to do and to  
2 come up with ideas that we can explore with the parties that  
3 may be helpful to the Court and each of the parties.

4 I thought our informal science presentations were  
5 extremely helpful. It was a good way for us to find out  
6 some stuff and start. And nobody had to be on the defensive  
7 because nothing was on the record. Nothing was usable.  
8 Stuff like that is very helpful to the Court.

9 You know, I had a misspent youth in politics. I -- you  
10 know, focus groups and things like that are entertaining to  
11 me. I -- mock trials, which we mentioned this morning, I'm  
12 not ruling that out. All I'm saying is if the defendants  
13 are saying, "Hell, no," then it's unlikely that I'm going to  
14 say we've got to do it.

15 Now, -- I'm sorry. I'm not letting you talk.

16 MR. GARRARD: I'm sorry.

17 CHIEF JUDGE GOODWIN: But, but ideas for  
18 innovation that would streamline discovery, for example,  
19 that you feel like would be best handled by an order, great  
20 idea. I'm happy to, happy to consider that and I know Judge  
21 Stanley would be, all of those things. I'll be glad to put  
22 it on the agenda.

23 Now, you had something else.

24 MR. GARRARD: What I was going to say was, number  
25 one, our proposal would not be mediation. I've never liked

1 mediation. I've never found it to be all that helpful.

2 But the defendants, or at least some of them, have said  
3 to me there must be some innovative way to approach all of  
4 this because they have problems and we have problems, and we  
5 both know that. And they have all said to me, "You know,  
6 we've got to figure out what's the value of these cases.  
7 How do we evaluate them?"

8 So, from those sorts of ideas I think there are things  
9 that perhaps would be helpful to them as well as us, and  
10 we'd simply like to bring some of that to the Court.

11 CHIEF JUDGE GOODWIN: I'd be glad to hear from  
12 both sides on any such thing. I will tell you that in this  
13 district it is fairly commonplace that in bench trial  
14 matters or in matters where there are multiple parties and  
15 they're not comfortable with the trial judge conducting  
16 shuttle diplomacy between rooms for settlement, the judges  
17 frequently will work for each other.

18 Judge Stanley many times has helped the District Judge  
19 settle cases. Judge Chambers and I frequently help settle  
20 each other's cases. Not mediation, but at the pleasure of  
21 the parties, we help, try to help.

22 I think that willingness to help could even go so far  
23 as to have another judicial officer hear an argument and  
24 give you a read on what they think. It wouldn't necessarily  
25 tell you what I thought but, I mean, any kinds of things

1     like that I am open to.

2             MR. GARRARD: Thank you.

3             CHIEF JUDGE GOODWIN: Yes, sir.

4             MR. ADAMS: I had one other issue, Your Honor.

5             CHIEF JUDGE GOODWIN: Yes, sir.

6             MR. ADAMS: Robert Adams for Boston Scientific.

7             CHIEF JUDGE GOODWIN: Yes, sir.

8             MR. ADAMS: On the, on the trials, you gave us the  
9     first day of the trial December 3rd, and then talked about a  
10    second, third trial. Should we assume that you'll provide  
11    us dates and parties for the second trial?

12            CHIEF JUDGE GOODWIN: Well, here's what I plan to  
13    do. I want, I want two trials ready to go on the 3rd  
14    because one, one will blow up sure in molasses, sure in --  
15    you know what I mean.

16            I am not going to set a date for the second trial yet.  
17    It's going to come right after the first trial. As we get  
18    closer, we can get together and we can come to an order of  
19    how long you're going to take. I don't know now. If I told  
20    you today you get seven days, seven trial days to try these  
21    cases, that might be wrong. I was just being arbitrary.  
22    I'm not informed enough to know.

23            Let me say this. This is just of interest to you. For  
24    whatever reason, and I don't do anything different than any  
25    other judge I know, although I haven't been in court for

1 many years, my cases go faster than any other judge I know.  
2 And I don't know why. I truly do not know why. I've  
3 thought about it. I've speculated about it. Maybe because  
4 I don't talk like this during trials. But they will go  
5 faster than you think.

6 I will share a couple things. One is, I, I don't allow  
7 cumulative evidence. I don't allow the same question to be  
8 asked more than once. I don't allow lawyers to make  
9 arguments on objections unless I don't understand what the  
10 heck the objection is about. I don't allow lawyers to  
11 repeat the answers that somebody just gave that they think  
12 that the jury was deaf and couldn't hear.

13 Maybe those are some of the things. And I don't take  
14 breaks. I take a 15-minute break in the morning, an hour  
15 for lunch, a 15-minute break in the afternoon. That's it.  
16 I don't schedule any other matters. I don't take phone  
17 calls. So, I don't know what else, but they go fast.

18 And in case I forget it, which I absolutely won't, if  
19 you run out of witnesses, you rest. The fact your expert is  
20 on a flight from Cleveland and got stuck in fog in  
21 Pittsburgh won't work. You've got to bring them in a day  
22 early.

23 It's nice to see all of you. I hate to think how much  
24 this costs. I see nobody here that's worth less than -- I'm  
25 not even going to give a number.

1 Court's adjourned.

2 (Proceedings concluded at 2:10 p.m.)

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9 I, Lisa A. Cook, Official Reporter of the United  
10 States District Court for the Southern District of West  
11 Virginia, do hereby certify that the foregoing is a true and  
12 correct transcript, to the best of my ability, from the  
13 record of proceedings in the above-entitled matter.  
14  
15

16 s\Lisa A. Cook

December 12, 2012

17 Reporter

Date

25